IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/04/2004

Coram

The Hon'ble Mr. Justice S.SARDAR ZACKRIA HUSSAIN

Civil Revision Petition No.2020 of 1999

Ameerbai. ... Petitioner.

-Vs-

A.Mohammed Saliah. ... Respondent.

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgment and decree dated 4.3.1999 and made in R.C.A.No.4 of 1998 on the file of the Rent Control Appellate Authority (Principal Sub Court), Coimbatore, confirming the order and decretal order dated 23.12.1997 passed in R.C.O.P.No.240 of 1994 on the file of the Rent Control (First Additional District Munsif) Court, Coimbatore.

!For petitioner : Mr.K.Rajkumar.

^For respondent : Mr.K.Ethiraj
for B.R.Ramesh Babu.

:O R D E R

The revision petitioner is the unsuccessful tenant before the learned Rent Controller and as confirmed by the learned Rent Control Appellate Authority in respect of the eviction ordered from the petition residential premises on the ground of wilful default in payment of rent and acts of waste. The eviction sought on the ground of own use and occupation for residential purposes and for demolition and reconstruction have been negatived by the learned Rent Controller and confirmed in the appeal preferred by the landlord before the learned Rent Control Appellate Authority.

2. The respondent/landlord filed the Rent Control Original Petition seeking eviction on the ground of wilful default in payment of rent stating that the revision petitioner/tenant committed default in payment of rent wilfully from January, 1992 to June, 1994 at the rate of Rs.375/- per month for the portion bearing door No.7/53 and 54 of Sathra Veethi, Podanur Town, Coimbatore District. The petition premises is required for own use and occupation by the landlord with his family members.
The tenant has damaged the dividing wall of the house and put a doorway without the consent or permission of the landlord. When questioned the tenant

set right the same, but again in March, 1993 the tenant caused damage to the wall and put a pathway. The landlord preferred complaint to the Podanur Police Station for taking action on 7.3.1993 and an agreement was reached between them which was reduced to writing that the tenant is to pay a sum of Rs.2,625/- towards arrears of rent for 14 months before 20.3.1993, that he is to reconstruct the damaged wall before 14.3.1993 and he is to get permission before making alterations in the property. The building is very old, and in dilapidated and very bad condition. Hence, the landlord requires the building for the purpose of demolition and reconstruction, for which purpose, he has got sufficient means. He undertakes that the work of demolition will be commenced not later than one month and will be completed before three months from the date of recovery of possession. The lawyer notice issued on 3.7.1994 was served upon the tenant on 5.7.1994.

3. The respondent tenant filed counter denying that he is very irregular and committed default in payment of rent. He paid the rent till June, 1994 directly to the landlord without receiving receipt. The rent for the months of July, August and September, 1994 sent by money order was refused by the landlord. The requirement sought that the petition premises is required for own use and occupation by the landlord with his family members is without bona fide. The landlord has let out 6 other portions abutting the petition premises to various tenants. He has also got three shops and two houses and leased out these portions to various tenants. It is denied that the tenant damaged the dividing wall of the house and put a doorway and that in March, 1993 caused damages to the wall and put a pathway. It is denied that the building is very old and in dilapidated condition. The petition premises is in very good condition.

4. The trial Court considering the evidence of the landlord as P.W.1 and that of the evidence of the tenant as R.W.1 and R.W.2, Sub Inspector of Police, Podanur Police Station and the Exs.A-1 to A-15 marked on the side of the landlord and the Ex.B-1 marked on the side of the tenant and accepting the case of the landlord ordered eviction on the ground of wilful default in payment of rent and on the ground of acts of waste, but refused to order eviction on the ground of own use and occupation and for demolition and reconstruction. The appeal preferred by the tenant in respect of the eviction ordered and the appeal preferred by the landlord with regard to the denial of eviction on the ground of own use and occupation and demolition and reconstruction were tried together and the learned Rent Control Appellate Authority also confirmed the eviction as ordered on the ground of wilful default in payment of rent and acts of waste. The learned Rent Control Appellate Authority also accepted the view taken by the learned Rent Controller in refusing to order eviction on the ground of own use and occupation and demolition and reconstruction. The tenant has preferred the revision in respect of the eviction ordered by the learned Rent Controller as confirmed by the learned Rent Control Appellate Authority. No revision has been preferred by the landlord challenging the correctness of the order of the Rent Control Appellate Authority in confirming the order of the learned Rent Controller refusing to order eviction on the ground of own use and occupation

and demolition and reconstruction.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

6. It is claimed by the landlord that the tenant has committed default wilfully in payment of rent for the months of January, 1992 to June, 1994 for the petition premises consisting of two portions with separate door numbers viz., 53 and 54 at Sathra Veethi, Podanur Town. In the notice Ex.A-3 dated 6.7.1993, it is stated that the tenant has not paid the rent from January, 1992 till June, 1993 amounting to Rs.6,375/- at the rate of Rs.375/- per month for both the portions. The notice was returned under Ex.A-4. Again, the landlord caused lawyer notice under Ex.A-5 dated 3.7.1994, in which it is stated that the tenant has not paid rent from January, 1992 till June, 1994. The tenant replied under Ex.A-7 dated 12.7.1994 stating that he has paid the rent upto June, 1994 without obtaining receipts.

7 . Exs.A-8 is the copy of ledger extract in the R.C.O.P.No.240 of 19 94, subject matter of this revision petition, in which, it appears that the sum of Rs.8,250/- was deposited on 9.10.1996 as per chalan No.601 dated 5.8.1996 for 22 months, i.e., from January, 1992 to October, 1993 that the sum of Rs.1,125/- was deposited on 9.10.1996 as per chalan No.770 dated 6.9.1996 for 3 months i.e., from November, 1993 to January, 1994 and that the sum of Rs.750/- was deposited on 3.12.199 6 as per chalan No.1274 dated 29.10.1996 for 2 months i.e., for the months of February, 1994 and March, 1994. Therefore, it is clear that the rents from the months of January, 1992 to March, 1994 was deposited only in the Court, nearly two years after the filing of the Rent Control Original petition.

8. It appears, the landlord preferred the complaint under Ex.A-1 dated 7.3.1993 to Podanur police station, pursuant to which, it appears an agreement was reached between the landlord and the tenant which was reduced to writing and the copy of which is Ex.A-14 dated 7.3.1993 . As per Ex.A-14, it is seen that the tenant agreed to pay the arrears of rent for 14 months before 20.3.1993 and also agreed to pay the future rent every month at the rate of Rs.375/- on the first date of every month. R.W.2, Sub Inspector of Police, Podanur police station has stated in his evidence that Ex.A-14 is the true copy furnished by the Sub Inspector of Police, Podanur during the relevant time. The tenant as R.W.1 has stated in his evidence that he has sent the rents for the months of July, August and September, 1994 by money order, viz., Rs.1,125/- and it was returned as per Ex.B-1 and thereafter, he has deposited the rent into Court. The Rent Control Original Petition was filed on 28.7.1994 stating that the rent from January, 1992 to June, 1994 was not paid. Therefore, it is clear that as claimed by the landlord, the tenant has committed default in payment of rent wilfully for the months of January, 1992 to June, 1994, in that the rent for the said months was deposited nearly two years after filing of the Rent Control Original Petition i.e., between the period from 9.10 .1996 and 3.12.1996. Further, the rent for the months of April to September, 1994 was deposited only on 14.3.1997 as per chalan dated

12 .3.1997, as per which a sum of Rs.2,250/- was deposited as seen from Ex.A-15, ledger extract. It is clear that the rent has not been deposited regularly and every month and has been deposited only two years after the filing of the Rent Control Original Petition, so that the landlord cannot get the rent periodically and every month, as such there have been deliberate intention and incalcitrant attitude in depositing the rent for the months of January, 1992 to September, 1994, two years after filing of the Rent Control Original Petition and in view of such indifference, the default in payment of rent for the said months is to be construed as wilful.

9. Though it is claimed by the tenant in the counter that he paid the rent from January, 1992 to June, 1994 on that aspect there is no satisfactory evidence. If really, the tenant had paid the rent for the months of January, 1992 to June, 1993 as claimed in Ex.A-3 dated 6.7.1993 he could

have received Ex.A-3 and replied for the same, but it was returned as unclaimed under Ex.A-4. The notice sent under Ex.A-5 has been served upon the tenant under Ex.A-6. The address in Ex.A-5 and in the returned cover Ex.A-4 is similar. Therefore, on coming to know that the arrears of rental amount is claimed in the notice Ex.A-3, the tenant has returned the said notice under Ex.A-4 as not claimed. So, it is to be presumed that since the tenant has committed default wilfully for the months of January, 1992 to June, 1993 as claimed in Ex.A-3, he refused to receive the notice under Ex.A-4.

10. The arrears of rent under Ex.A-5 is admitted by R.W.1, the tenant, in his cross-examination and also deposed that he deposited rent in lump-sum and not every month. The tenant also admitted in his evidence that as per Ex.A-14 dated 7.3.1993 which came into existence on the basis of complaint Ex.A-1 preferred by the landlord, the tenant has to pay the arrears of 14 months rent before 20.3.1993.

11. Considering these aspects, the learned Rent Controller and the learned Rent Control Appellate Authority have correctly recorded finding that the tenant has committed default in payment of rent for the months of January, 1992 to June, 1994.

12. As regards acts of waste, it is set out in the Rent Control Original Petition that the tenant caused damage to the wall in March, 19 93 and put a pathway. In his evidence, the tenant admitted that he requested the landlord to construct a bath room and to make a pathway in between the door Nos.53 and 54 and also to put up compound wall for which the landlord gave permission to construct the same. Hence, the tenant created a pathway between the two portions by demolishing the wall (madakuzhi) and also constructed a bath room behind the portion bearing door No. 53 and making the bath room to appear as compound wall. R.W.1 has also admitted in his evidence that the complaint was preferred by the landlord to the police station that he caused damage. If really, R.W.1, the tenant was permitted by the landlord, no complaint could have been preferred by the landlord. The very fact that the complaint was preferred by the landlord to the police would clinch the issue that such construction was put up and damage was caused without obtaining written consent of the landlord. As such, the landlord has proved that the tenant has committed acts of waste impairing materially the value and the

utility of the building,in view of the fact that bath room and compound wall have been put up behind the portion bearing door No.53 making it appear as if that was a compound wall and that by demolishing the wall (madakuzhi) he has made a path way in between two portions, viz., the premises bearing door Nos.53 and 54. Such constructions and additions certainly affects the utility of the building.

13. The learned counsel for the landlord argued that though no revision is preferred against the dismissal of the appeal preferred by him before the learned Rent Control Appellate Authority in confirming the order of the learned Rent Controller refusing to grant eviction on the ground of own use and occupation and demolition and reconstruction, it is still open for the landlord to put-forth such contention in this Civil Revision Petition. There is some force in that contention.

14. In H.R.M.Dwarappa Nadar vs. - P. Thirupurasundari Ammal (1989)1 Law Weekly (J.S.)46, it has been observed:-

"It appears to be settled law so far as this Court is concerned that where a final order in rent control proceedings is in favour of the landlord, even though on certain grounds the claim for eviction has been rejected and it has been granted on some other grounds, it is permissible for the landlord to contend in a revision petition filed by the tenant that the order of eviction should be sustained on other grounds held against the landlord and that he is entitled to show that the finding recorded by the Appellate Authority against him was erroneous."

15. As regards the requirement sought on the ground of own use and occupation, in his evidence, P.W.1 has stated that he is the owner of the house in which he is residing with his family members. In his evidence, the landlord as P.W.1 has stated that all his four sons has got married and he is residing with his sons and their family members in the same house and that only one son is living separately. In the notice Ex.A-3 dated 6.7.1993, nothing was stated that the petition premises is required for own use and occupation. Even in the notice Ex.5 dated 3.7.1994 no such request was made. Further, it is not made clear in the Rent Control Original Petition for which of his sons the requirement of the petition premises sought. The landlord is residing with his family members consisting his sons and their wives and children in the house bearing door No.7/171 which is a tiled house. No further evidence has been adduced on his side as to whether, the said house consists how many rooms and as to whether the said house is not sufficient to reside with his sons with their wives and children. Therefore, the requirement of the petition premises consisting of two portions bearing door Nos.53 and 54 as sought for by the landlord is without bona fide. So, the finding of the both the Courts below in this regard that such requirement is mala fide is to be affirmed.

16. As regards the requirement sought on the ground of demolition and reconstruction, it is admitted by P.W.1 in his evidence that the petition premises bearing door Nos.49 to 54 are under common roof and he has filed petition to evict only the tenant who is in occupation of the portion bearing door Nos.53 and 54 and has not taken steps in respect of other tenants who are in occupation of the portions bearing door Nos.49 to 52. According to him, he purchased the property in 1942 and the age of the

petition premises is about 70 to 80 years. Even assuming as stated by P.W.1 that the age of the building is 70 to 80 years and that he had got sufficient funds in view of the fact, he and his wife own several property and are in a position to raise funds, the requirement sought on the ground of demolition and reconstruction cannot be said to be bona fide, in that no petitions have been filed to evict the tenants who are in occupation of the premises bearing door Nos.49 to 52, which portions and the petition portions bearing door Nos.53 and 54 are under the same common roof. Therefore, without obtaining the vacant possession of the other portions, the petition premises alone cannot be sought for demolition and reconstruction. Further, the landlord also has not taken out commission to find out the condition of the building with the assistance of the Engineer and he has not examined any Engineer in this regard.

17. Considering all these aspects both the Courts below concurrently found that the requirement sought for on the ground of demolition and reconstruction is without bona fide and rightly rejected the eviction on that ground.

18. In the result, this Civil Revision Petition is dismissed with cost, confirming the eviction ordered by the learned Rent Controller on the ground of wilful default in payment of rent and acts of waste and as affirmed by the learned Rent Control Appellate Authority.

Index :Yes.
Internet:Yes.

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To

1) The Principal Subordinate Judge,
Coimbatore.

2) The First Additional District Munsif,
Coimbatore.

3) The Section Officer,
V.R. Section,
High Court,
Madras.